THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, the 23rd day of March,2007

W.P.No.16528 of 2006

Between:-

M/s. Sirpur Paper Mills Limited,
Sirpur-Kaghaznagar, rep. by is
Joint Manager (Legal) … Petitioner

and

Industrial Tribunal-cum-Labour
Court, Godavarikhani, rep. by its
Chairman, Godavarikhani, Karimnagar
District and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.16528 of 2006

ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Order dated 3-7-2006 passed in I.A.No.73 of 2005 in I.D.No.56 of 1999 on the file of the Industrial Tribunal-cum-Labour Court, Godavarikhani and to quash the same as arbitrary and illegal.

Petitioner is the Management of Sirpur Paper Mills Limited, Sirpur-Kaghaznagar. Respondent No.2 is the workman.

Respondent No.2, who was working as a Cashier, was discharged from service of the petitioner-Management with effect from 9-2-1999, after conducting an enquiry into the allegations made against him. Aggrieved by the same, he raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act'). Initially, the Tribunal dismissed the I.D., after hearing the counsel for the Management and perusing the evidence on record, on 6-6-2001, since the workman was continuously absent and his Advocate reported 'no instructions'. Thereafter, the 2nd respondent-workman filed I.A.No.47 of 2001 to set aside the dismissal Order dated 6-6-2001. The said I.A. was ordered and the matter was reopened by the Tribunal for fresh enquiry and consideration. The Tribunal again dismissed the I.D. on 7-1-2005. While that being so, according to the workman, for the second time also, I.D.No.56 of 1999 was dismissed without hearing him and considering his case properly, on 7-1-2005.

Therefore, he filed the present I.A.No.73 of 2005 under Section 11 of the Act seeking to set aside the Award passed on 7-1-2005 and to hear the matter again. The said I.A. was allowed by an Order dated 3-7-2006. Challenging the same, the Management has filed the present Writ Petition.

Sri Vedula Srinivas, learned counsel for the petitioner strenuously contended that the Order passed in the I.D. on 7-1-2005 is neither an *ex parte* Award nor there is any procedural irregularity committed by the Tribunal for seeking review of the same. In fact, in the Award dated 7-1-2005 at paragraphs 5 and 6, the Tribunal has recorded that on behalf of workman, Exs.W1 and W2 were marked and on behalf of the Management, Exs.M1 to M24 were marked and heard both sides. Once this is so, the contention of the workman that he was not heard or the Tribunal passed such an Order without considering the evidence adduced by him, is not correct. Further, what transpired in a Court of law and what recorded by the Court cannot be a subject matter of review, apart from the fact that neither there is any legal infirmity nor error apparent on the face of record nor there is any infirmity in following the procedure while enquiry is being conducted into the dispute raised before the Tribunal. In the entire affidavit filed by the workman in support of I.A.No.73 of 2005, there is no whisper that there was any procedural irregularity committed by the Tribunal calling for review etc. That apart, the Tribunal has no power to review its own order. The only course left for the workman was to file a Writ Petition being aggrieved by the Award made on 7-1-2005 and it is always open for this Court under Article 226 of the Constitution of India to examine all the issues. Instead of that, the workman has invented a novel method of filing a petition under Section 11 of the Act and the Tribunal has erroneously

entertained the same, allowed it and set aside the Award made on 7-1-2005, which is arbitrary and illegal.

Whereas, Sri L. Prabhakar Reddy, learned counsel appearing for the 2nd respondent-workman, contended that though at paragraphs 5 and 6 of the Award made on 7-1-2005, it was stated that certain documents were marked and both sides were heard, the workman or his counsel never participated in the said proceedings. Even otherwise, the procedure as required under the law for the purpose of conducting an enquiry, was not properly followed by the Enquiry Officer and such a plea was not properly considered by the Tribunal while passing Orders on 7-1-2005. Therefore, a procedural irregularity was committed by the Tribunal, while passing the Award on 7-1-2005. This aspect was examined by the Tribunal in right perspective in I.A.No.73 of 2005 and came to the conclusion that the predecessor-in-office did not examine the case properly and there was no finding recorded that the domestic enquiry conducted by the Management was fair and proper and it is valid or invalid. Unless and until such a finding is recorded by the Tribunal, it could not have proceeded further. It simply assumed that the enquiry was conducted in a fair manner without examining as to the various aspects raised by the respondent-workman. Therefore, it was necessitated for the workman to file a petition under Section 11 of the Act to set aside the *ex parte* Award and this was rightly considered by the Tribunal and allowed the application. It is within the powers vested in it under Section 11; therefore, no interference can be made by this Court, with the impugned Order.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the impugned Order and other material made available on

record.

Earlier when an *ex parte* Award was passed, the petitioner-workman filed I.A.No.47 of 2004 and the same was allowed on 23-2-2004 and the matter was reopened. According to the 2nd respondent-workman, while disposing of the matter for the second time, neither the arguments of his counsel were recorded nor the procedure for the purpose of disposing of the I.D. was followed; therefore, he filed the present petition in I.A.No.73 of 2005 under Section 11 of the Act. In this regard, learned counsel for the petitioner relied upon a Judgment reported in **KAPRA MAZDOOR EKTA UNION v. BIRLA COTTON SPINNING AND WEAVING MILLS LTD.**[1] wherein it was held as under:

> "14. The core question which arises for consideration is whether the Industrial Tribunal was justified in recalling the earlier Award made on June 12, 1987 and in framing an additional issue for adjudication by the Tribunal. According to the appellant the recall of the order was fully justified in the facts of the case, while the respondents contend to the contrary. Two issues arise for our consideration while considering the legality and propriety of the Tribunal in recalling its earlier Award. Firstly - whether the Tribunal had jurisdiction to recall its earlier order which amounted virtually to a review of its earlier order; and secondly - whether the Tribunal had no jurisdiction to entertain the application for recall as it had become functus officio. The High Court answered the first question in favour of the respondent-Management and the second in favour of the appellant.
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> 16. In the instant case as well we find that as on September 7, 1987 the Award had not become enforceable and, therefore, on that date the Tribunal had jurisdiction over the disputes referred to it for adjudication. Consequently it had the power to entertain an application in connection with such dispute. The order of recall passed by the Tribunal on February 19, 1990, therefore, cannot be assailed on the ground that the Tribunal had become *fuctus officio*.
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> 17. The question still remains whether the Tribunal had jurisdiction to recall its earlier Award dated June 12, 1987. The High

Court was of the view that in the absence of an express provision in the Act conferring upon the Tribunal the power of review the Tribunal could not review its earlier Award. The High Court has relied upon the judgments of this Court in Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P.) and others (1987) 4 SCC 525 and Patel Narshi Thakershi and others v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 wherein this Court has clearly held that the power of review is not an inherent power and must be conferred by the law either expressly or by necessary implication. The appellant sought to get over this legal hurdle by relying upon the judgment of this Court in Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others (supra). In that case the Tribunal made an ex parte Award. Respondents applied for setting aside the ex parte Award on the ground that they were prevented by sufficient cause from appearing when the reference was called on for hearing. The Tribunal set aside the ex parte Award on being satisfied that there was sufficient cause within the meaning of Order 9 Rule 13 of the Code of Civil Procedure and accordingly set aside the ex parte Award. That order was upheld by the High Court and thereafter in appeal by this Court.

18. It was, therefore, submitted before us relying upon Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others (supra) that even in the absence of an express power of review, the Tribunal had the power to review its order if some illegality was pointed out. The submission must be rejected as misconceived. The submission does not take notice of the difference between a procedural review and review on merits. This Court in Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others (supra) clearly highlighted this distinction when it observed:-

> "Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the later sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debita justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal".

19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of

review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again

20. The facts of the instant case are quite different. The recall of the Award of the Tribunal was sought not on the ground that in passing the Award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the Award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication."

and submitted that the Industrial Disputes Act does not contain any

provision granting any power of review, either expressly or by necessary implication, and since the review sought, in the instant case, was not a procedural irregularity, but review on merits, the application under Section 11(1) of the Act by the workman is itself misconceived and not maintainable. Unless and until a quasi judicial authority is conferred with the power of review, by law, expressly or by necessary implication, no review can be taken-up. However, in the said Judgment, it was held that the procedural review is different and power to do such procedural review is inherent. I am of the view that this decision has no relevance to the facts of this case. In fact, at paragraph-19 of the said Judgment, as noticed above, it was categorically held that in cases where a decision was rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which power of procedural review may be invoked. The party has to establish that the procedure followed by the Court or quasi judicial authority suffered from such illegality that it vitiated the proceedings and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or the matter was heard and decided on a date other than the one fixed for hearing of the matter, which he could not attend for no fault of his. In such cases, the matter has to be reheard in accordance with law without going into the merits of the Order passed and such an order is liable to be recalled and reviewed not because it was found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake, which went to the root of the matter and invalidated the entire proceeding. This is exactly the issue that

requires to be decided in this matter. The same would be discussed infra.

In fact, the sum and substance of the said Judgment is that a review cannot be made on merits, unless and until there is an express or implied power, but the procedural review can be made whenever a Tribunal had committed any procedural illegality or mistake of the nature, which vitiated the proceeding itself.

Learned counsel for the petitioner also relied upon another reported Judgment in **GURUVAYOOR DEVASWOM MANAGING COMMITTEE v. C.K. RAJAN**[2] wherein, the decisions in **STATE OF MAHARASHTRA v. RAMDASSHRINIVAS NAYAK**[3] and **ROOP KUMAR v. MOHAN THEDANI**[4] were considered, and submitted that if a party thinks that the happenings in Court have been wrongly recorded in the Judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the judges, who have made record. This is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Learned counsel submitted that in the instant case, the workman did not bring it to the notice of the Presiding Officer, who passed the order and after a new Presiding Officer taken over the charge, he made all the allegations, to say, that neither the documents were marked in his presence nor he was heard in the matter and such a plea could not have been entertained by the new Presiding Officer. There cannot be any dispute as to the proposition laid down in the above case. There is no necessity of any further probe into this aspect since this has no much relevance for the decision of the present case.

Learned counsel for the petitioner further relied upon another Judgment reported in **MUDIKI BHIMESH NANDA v. TIRUPATI**

URBAN DEVELOPMENT AUTHORITY[5] and drawn attention of the Court to paragraphs 10 and 18 to say that if a review is sought narrating sequence of events relating to the case and pointing out the errors committed by the Court in coming to various conclusions in writ appeal, the findings of the Court below cannot be reversed by way of review, if there are any errors in appreciating the facts. The remedy, if any, is only before the higher forum. The review lies only to correct the error apparent on the face of record and not to rehear and correct an erroneous decision. The power of review may be exercised for correction of a mistake and not to substitute a view. There cannot be any dispute as to the law laid down by this Court in the said case. In the said case, the review sought was on merits and it was found that no error apparent on the face of record was brought to the notice of the Court. The said decision has no relevance to the facts of the present case. In this case, the application was filed under Section 11 of the Act and the workman sought a procedural review and not a review on merits of the case.

Whereas, Sri L. Prabhakar Reddy, learned counsel appearing for the 2nd respondent relied upon a reported Judgment in **GRINDLAYS BANK LTD. v. INDUSTRIAL TRIBUNAL**[6] wherein it was held as under:

> "6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

and submitted that a distinction has to be made between an application for review and an application for setting aside an *ex parte* Award based on evidence. Review sought, in this case, is procedural in its nature, since the Labour Court has committed procedural irregularities in passing the order without giving proper opportunity to the petitioner therein (workman) and also without considering as to the validity of the domestic enquiry.

Learned counsel for the 2nd respondent further relied upon a Judgment of the Apex Court in **SATNAM VERMA v. UNION OF INDIA**[7] and drawn attention of the Court to paragraph-10, which as under:

> "10. Turning to the facts of the case, the first date of the hearing of the reference was, according to the Labour Court, February 23, 1982 and the date was fixed for framing issues, leading evidence and disposal of the reference, a sort of an omnibus stage. That apart according to the appellant, be was given the date February 20, 1982. He appeared, on Feb. 26, 1982, when he found that the matter was disposed of *ex parte* on February 23, 1982. On the same day, he moved an application pointing out that his information about the date was incorrect. This seems to be a bona fide assertion not seriously controverted. The Labour Court was therefore in error in rejecting this request promptly made. We are therefore, satisfied that both, the Labour Court and the High Court were in error in rejecting the application even on merits."

and submitted that the Labour Court has ample power to review its judgment when there is a procedural irregularity committed by it.

Learned counsel for the 2nd respondent also relied upon another Judgment of the Apex Court in **SANGHAM TAPE CO. v. HANS RAJ**[8] wherein it was held as under:

> "6. An industrial adjudication is governed by the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and the rules framed thereunder. The rules framed under the Act may

> provide for applicability of the provisions of the Code of Civil Procedure. Once the provisions of the Code of Civil Procedure are made applicable to the industrial adjudication, indisputably the provisions of Order IX, Rule 13 thereof would be attracted. But unlike an ordinary Civil Court, the Industrial Tribunals and the Labour Courts have limited jurisdiction in that behalf. An award made by an industrial Court becomes enforceable under Section 17-A of the Act on the expiry of 30 days from the date of its publication. Once the award becomes enforceable, the Industrial Tribunal and/or Labour Court becomes functus officio."

and submitted that, in this case, application under Section 11(1) of the Act was filed within one month from the date of the Award passed by the Labour Court; therefore, the Labour Court does not become *functus officio* and as such, while exercising its inherent powers, it can review its order wherever procedural irregularity is pointed out.

Learned counsel for the 2nd respondent relied upon a decision of this Court in **NELLORE DISTRICT COOP.CENTRAL BANK LTD. v. PRESIDENT, NDCCBE ASSOCIATION**[9] to show that if an application is filed within 30 days under Section 17A of the Act, the Labour Court does not become *functus officio* and it has every power to deal with the matter on its own merits.

From all the above, the real question that falls for consideration is whether in the application in I.A.No.73 of 2005, the workman sought for procedural review or review on merits ?

No doubt, in the affidavit filed in support of I.A.No.73 of 2005, the workman stated as under:

> "It is submitted that the Management also gave a criminal complaint before the Police Kagaznagar Town Police station. The police also filed the C.C.No.148 of 2003 before the Judicial First Class Magistrate. The above Criminal Case No.143 of 2003 the Court gave the order stating that I was acquitted under Section 248(1) of Cr.P.C. and not found guilty against me. The Management suppressing the fact before this Hon'ble Court about my acquittal though it has filed the FIR, Charge sheet as Exhibit M-24. I submit that I came to know after receiving the Award, the Management has

> suppressed the above said truth. It is submitted that I am not done any misconduct. It was proved from the criminal court judgment. Therefore I may kindly be given an opportunity to prove my case. And the Management is not given any opportunity in the enquiry. In the enquiry conducted by the Management they used my blank signed papers kept in my office and I was not given any opportunity to defend my case and that blank signed papers used as my evidence and marked as Exhibits before this Hon'ble Court. The point that I was discharged without any cause and also acquitted from the criminal case is a proof of my innocence. My acquittal in the criminal case No.143 of 2003 of Judicial First Class Magistrate, Sirpur Kagaznagar, further confirms my innocence."

It is seen that the 2nd respondent has pleaded that the Management has not given any opportunity in the enquiry and in the enquiry conducted by the Management, they used his blank signed papers kept in his office and he was not given any opportunity to defend his case and the blank signed papers were used as evidence and marked as exhibits before the Tribunal. Apart from that, he has also, of course, stated that the Judgment in criminal case in C.C.No.143 of 2003 on the file of Judicial First Class Magistrate, Sirpur Kagaznagar, which ended in acquittal and which shows that he is innocent, was not brought to the notice of the Tribunal. This may not have much relevance for the purpose of seeking a procedural review, but definitely, the plea of the workman that the Management has not given any opportunity in the enquiry conducted by the Management to defend his case properly would show the needle towards praying the Tribunal to examine as to whether the domestic enquiry conducted by the Management was valid or not. In fact, during the course of enquiry in the present I.A., the Labour Court has examined so many preliminary aspects as to the procedural things to be followed in the enquiry before it and it has recorded a finding that the procedure as required under the law was not followed. It was observed by the Tribunal that when the previous

I.A. was allowed setting aside the *ex parte* order and notice was given to both the parties, on that date, only the workman was present, but the management or its counsel did not present. Therefore, the next step was only for preliminary issue. Without posting the case for preliminary issue, it was directly posted for hearing of the I.D. The docket orders of 31-12-2004 shows "Heard. For Orders". It was not clear, whether the petitioner and his counsel were present and they have argued or whether the respondent or his counsel present, how they argued without the presence and filing continuation Memo of the Vakalat. Both these aspects were silent. Even on perusal of the I.D. award there was no recital that the petitioner argued the matter, except noting in the preamble of the Award. Ultimately, it was found that there is no finding on the preliminary issue, such as, validity of domestic enquiry. Under those circumstances, the Tribunal has allowed the application. Therefore, I am of the view that the Tribunal has rightly come to the conclusion that a finding on the preliminary issue of validity of domestic enquiry was not recorded and thus there was a procedural irregularity committed by the predecessor-in-office and as such, set aside the Award dated 7-1-2005. In this regard, Sri Vedula Srinivas, learned counsel for the petitioner, strenuously contended that in the Award passed on 7-1-2005 at paragraph-9, it was recorded by the Tribunal that "a fair and proper enquiry was conducted against the petitioner". Except this stray finding at paragraph-9 of the Award, nowhere it is stated that the domestic enquiry was found to be conducted properly and as per law and the same is valid. In this regard, it is necessary to refer to the Judgment of the Supreme Court reported in **COOPER ENGINEERING LTD. v. MUNDHE**[10] wherein it was held that preliminary enquiry as to the validity of the domestic enquiry before going into the merits of the case

is a must. Such a procedure was not followed by the Tribunal and neither it is the case of the petitioner that such an enquiry was conducted earlier nor a proper and reasoned finding was recorded thereagainst. In view of the above, the argument of the learned counsel for the petitioner that there was no procedural irregularity committed by the Tribunal calling for its review is not tenable.

May be, the 2nd respondent-workman has not stated in so many words, but he has definitely indicated that the enquiry was not properly conducted and no opportunity was given to him by the Management; therefore, injustice was done to him and this requires to be looked into by the Tribunal. This satisfies the requirement of examining the validity of the domestic enquiry as per the above Judgment. Therefore, the contention of the learned counsel for the petitioner that the review sought to be made is on merits of the case and not on the basis of any procedural irregularity cannot be countenanced. The irregularity committed by the Tribunal was brought to its notice within 30 days from the date of the Award and the Tribunal did not become *functus officio* and it has every power under the Act to deal with the matter under Section 11(1) of the Act read with Rules 24 and 26 of the A.P. Industrial Disputes Rules,1958. Therefore, it cannot be said that the order passed by the 1st respondent-Tribunal on 3-7-2006 in I.A.No.73 of 2005 in I.D.No.56 of 1999 is either arbitrary or illegal, requiring interference of this Court under Article 226 of the Constitution of India. The Writ Petition is devoid of any merit and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

23-3-2007

prk

[1] 2006 SCC (L&S) 1635

[2] 2003(7) SCC 546

[3] 1982(2) SCC 463

[4] 2003(6) SCC 595

[5] 2005(5) ALT 41 (DB)

[6] 1980 (Supp) SCC 420

[7] AIR 1985 SC 294

[8] 2005(9) SCC 331

[9] 2001(1) ALD 73

[10] AIR 1975 SC 1900